



**CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION**  
**4500 KNOX ROAD COLLEGE PARK, MARYLAND 20740**  
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**ADVISORY PLANNING COMMISSION**

***Approved Minutes of Meeting***  
***November 1, 2012 – 7:30 P.M.***  
***City Hall Council Chambers***

<u><b>Members</b></u>	<u><b>Present</b></u>	<u><b>Absent</b></u>
Lawrence Bleau, Chair	_____	_____ X _____
Mary Cook, Vice-Chair	_____ X _____	_____
James McFadden	_____ X _____	_____
Charles Smolka	_____	_____ X _____
Clay Gump	_____ X _____	_____
Rose Greene Colby	_____ X _____	_____

Also Present: Planning Staff- Terry Schum, Miriam Bader, Theresheia Williams; Attorney: Sue Ford.

**I. Call to Order:** Mary Cook called the meeting to order at 8:00 p.m.

**II. Approval of Minutes:**

Mary Cook moved to accept the minutes of September 20, 2012, after the correction of Lawrence Bleau's name on page 5. Clay Gump seconded. The motion carried 4-0-0.

James McFadden moved to accept the minutes of October 4, 2012. Rose Colby seconded. The motion carried 4-0-0.

**III. Amendments to Agenda:** There were no Amendments to the Agenda.

**IV. Public Remarks on Non-Agenda Items:** There were no Public Remarks on Non-Agenda Items.

**V. Public Hearings:**

<b>CNU-2012-02:</b>	<b>Certification of Nonconforming Use to continue a 3-unit multi-family dwelling</b>
<b><u>Applicant:</u></b>	<b>Blair Smith</b>
<b><u>Location:</u></b>	<b>7018 Wake Forest Drive</b>

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting a Certification of Nonconforming Use to continue a 3-unit multi-family dwelling at the Blair Hanna Apartments at the southwest corner of Guilford Road and Wake Forest Drive. The applicant is not proposing any changes to the property but needs to obtain a current Use and Occupancy permit, which cannot be obtained until the use is certified as nonconforming. The use is not conforming because it does not meet the Zoning Ordinance bedroom percentages requirement. On October 1, 1968, the Zoning Ordinance was amended to regulate the maximum number of bedrooms in a multi-family building. The existing building was built in 1940.

The 3-unit apartment building has a one bedroom unit in the basement, a two bedroom unit located on the main floor and the owner lives in the three bedroom unit on the second floor. The 1968 bedroom percentages amendment requires that no more than 10% of the units in a multifamily dwelling be three bedroom units.

According to tax records, the original building was constructed as a single-family structure in the residential A Zone, a single-family zone, in 1940. The property was rezoned on January 29, 1942 to the residential C Zone, which permitted multifamily use. The building was converted from a single family dwelling to a multifamily dwelling in 1948. The applicant submitted two affidavits attesting to the fact that the building contained three apartments from 1948 to 2012. The applicant also submitted City of College Park issued Rental Unit licenses/Occupancy Permits from 1967– 2007 that indicates that there were 2-3 units. Since the use became non-conforming in 1968, there has been no break in operation for more than 180 days. No evidence was submitted to indicate that the use was not continuous, or that the structure reverted to another use besides a three dwelling unit structure.

Staff concludes that the subject property has operated as a three dwelling unit structure since 1948. There is also no evidence to suggest a lapse of use since its establishment. Staff recommends that the Certification of Nonconforming Use be approved and that a new Use and Occupancy Permit be issued with the condition that the site plan be revised to add the date of construction, the unit mix and all the zoning requirements in effect at that time and how the site meets these requirements.

Miriam Bader submitted the staff report and Exhibits 1-7 into the record. Commissioners accepted unanimously.

Russell Shipley, attorney for the applicant, testified that the staff report was very thorough. He stated that the building was built as an apartment complex sometime before 1948, with three dwelling units, one on each floor. He stated that he received affidavits from two individuals who could attest to the number of units, but they could not testify as to the number of bedrooms in each unit. He also stated that the building was not altered from the original structure in terms of adding additional bedrooms.

Blair Smith, property owner, testified that he has owned the property since 1984 and has lived there since 1994, in the three-bedroom unit. He stated that the previous owner was his father. Mr. Smith also stated that the footprint of the building has not been altered in any way.

Commissioners reviewed the evidence and testimony submitted and determined that:

- 1) A valid City of College Park Rental Unit License was applied for pertaining to the subject property on February 20, 1967 for a three-unit apartment building with six rooming units, which complied at that time with multifamily regulations in the R-18 zone. This Rental License was issued on February 21, 1968 prior to the date the property became non-conforming on October 1, 1968.

- 2) The City of College Park Zoning Code defines a “rooming unit” at City Code 125-1 as including a room used or intended to be used for living and sleeping.
- 3) Based on a preponderance of the documentary evidence submitted including City of College Park occupancy permits and sworn affidavits (Exhibit 6) the structure at 7018 Wake Forest Drive has been continuously operated as a three dwelling unit building with six bedrooms, and there has been no break in operation for more than 180 days since the use became nonconforming on October 1, 1968.

James McFadden moved to certify CNU-2012-02 based on the staff report and that the three bedroom unit was in existence prior to 1968 and has remained in use continuously. Clay Gump seconded. The motion carried 4-0-0.

<b>CNU-2012-03:</b>	<b>Certification of Nonconforming Use to continue a 7-unit multi-family dwelling</b>
<b><u>Applicant:</u></b>	<b>Elaine C. Brincefield</b>
<b><u>Location:</u></b>	<b>7405 Columbia Avenue</b>

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting a Certification of Nonconforming Use to continue a 7-unit multi-family dwelling at Brincefield Apartments located at 7405 Columbia Avenue. The applicant is not proposing any changes to the property but needs to obtain a current Use and Occupancy permit. The existing building consists of an original 4-unit building built sometime between 1850-1925, before zoning and a 3-unit addition which also might have been constructed prior to zoning in 1928. The building contains six-one bedroom units and one three-bedroom unit in the basement. In 1969, the property was rezoned to R-18. At this time the property became non-conforming in terms of density. A property of this size only permits 5 units, not 7.

Staff concludes that the subject property was built prior to the adoption of the first Zoning Ordinance in 1928; therefore, the use is nonconforming and not illegal. There is also no evidence to suggest a lapse of continuous multifamily use. Staff recommends that the Certification of Nonconforming Use be approved and that a new Use and Occupancy Permit be issued with the following conditions:

- 1) A copy of the ingress/egress easement shall be provided.
- 2) The Plat shall be revised to include the current R-18 requirements and specify why the apartments are non-conforming.
- 3) The height of the garage shall be provided on the site plan.
- 4) The dimensions of the covered porch as well as the deck shall be provided on the site plan.
- 5) The unit mix with bedroom percentage calculations shall be provided on the site plan.
- 6) The site plan shall state when the building was constructed and a source listed to support this date.

Miriam Bader submitted the staff report and Exhibits 1-6 into the record. Commissioners accepted unanimously.

Elaine Brincefiled, the owner, testified that she and her husband rented the seven apartments from 1995 to present day. She stated that the apartments have been continuously rented without a break in operation for more than 180 days.

Karen Maisonneuve, representing the applicant, testified that she has helped the applicant manage her property since her husband died. She stated that the application was filed with Park and Planning, but was turned over to the City along with a memo indicating the evidence they were requesting. She stated that the property is an historical property that was built as an apartment complex with four units. The addition contains the three bedroom unit. There have been no changes to the structure on the site since 1928. She stated that the basement is the full footprint of the house.

Clay Gump asked if staff could explain what about the property is nonconforming?

Miriam Bader stated that there are two things, density and bedroom percentages. For a property of this size, only 5 units would be permitted, not 7 and the three bedroom unit exceeds the maximum permitted percentage of no more than 10% 3 bedrooms.

Clay Gump asked if the break in operation criterion should start from 1968 in this case?

Terry Schum stated that the zoning was changed through a County action. Legally, existing units at the time of zoning, don't usually become nonconforming if they were able to be certified as nonconforming on that date. This property only became nonconforming first in 1968 with the bedroom percentages regulation and then in 1969 with the R-18 density requirement.

Clay Gump asked if a lapse of 180 days includes vacancies?

Miriam Bader stated no. If they converted it into a single-family home or some other use, they could not turn it back to an apartment unit.

Terry Schum stated that the County staff found that the date of nonconformance is 1968 because the nonconformance for the use is based on the current zoning. The property is currently zoned R-18, which is a multi-family zone. What makes it nonconforming is the council bill regarding bedroom percentages. When R-18 was first established, there were no bedroom percentage requirements. Also, this property does not comply with the density requirement of the R-18 zone. There should only be 5 units, there are 7.

Commissioners reviewed the evidence and testimony submitted and determined that:

- 1) The multi-family use was lawfully established prior to zoning in 1928 with seven dwelling units, and there has been no break in operation for more than 180 days since the use became nonconforming for a seven unit multifamily dwelling in 1928.
- 2) The structure at 7405 Columbia Avenue has been continuously operated as an apartment building including one three bedroom unit, and there has been no break in operation for more than 180 days, since the use became nonconforming for bedroom percentages in October 1968.

Clay Gump moved to certify CNU-2012-03 based on the conditions specified in the staff report. Rose Colby seconded. The motion carried 4-0-0.

**VI. Update on Development Activity:** Terry Schum reported on the following:

- 1) **Maryland Book Exchange** – A public hearing on the remand was scheduled before the District Council on October 30, 2012 but was rescheduled for November 5, 2012. The City reached an agreement with the applicant based on a revised plan. The Old Town Civic Association is still opposed and has filed an appeal and will be making an argument at the November 5 hearing.
- 2) **Cafritz** – There are no revised plans, but a hearing date has been scheduled for January 10, 2013. The case is scheduled for the City Council December 4<sup>th</sup> worksession.
- 3) **Town Place Suites** – The applicant has filed for building permits to construct an all suites Marriott. The property consists of two parcels that have been combined. One is a vacant lot, and the other is a single-family home being used as a rooming house.
- 4) **JPI West** - (Lasik and the former Hillcrest properties) The Detailed Site Plan has been approved for apartments and retail. The two properties are under contract with Monument Properties. They have an 18 month contract on the property. The applicants have met with the planning staff and plan to meet with civic associations and councilmembers who represent the area. The City Council previously had a separate agreement and covenant with JPI but it is not enforceable because JPI never took ownership of the property. The City needs to negotiate a new agreement with the applicant.

**VII. Review Policy of Committee members who don't attend meetings**

At the City Council October 3, 2012 worksession the City Council requested the City Clerk to act as a designee of the Chairperson to contact committee members who have absences that negatively impact on the committee. The City Clerk requests that the Chair of the committee notify her when there is a problem so that she can contact the member in question.

**VIII. Maryland Planning Commissioners Association 2012 Annual Conference**

The Maryland Planning Commissioners Association 2012 Annual Conference is being held on November 8<sup>th</sup> & 9<sup>th</sup> at the Westin Washington National Harbor. They will be offering a training course, which will satisfy the requirements of the Smart and Sustainable Growth Act of 2009. Commission members should contact staff to make reservations if they would like to attend.

**IX. Other Business:** There was no Other Business.

**X. Adjourn:** There being no further business, the meeting was adjourned at 9:30 p.m.

Minutes prepared by Theresheia Williams